

1 BRYAN A. MERRYMAN (SBN 134357)
bmerryman@whitecase.com
2 J. JONATHAN HAWK (SBN 254350)
jhawk@whitecase.com
3 WHITE & CASE LLP
633 W. Fifth Street, Suite 1900
4 Los Angeles, CA 90071-2007
Telephone: (213) 620-7700
5 Facsimile: (213) 452-2329

6 BIJAL V. VAKIL (SBN 192878)
bvakil@whitecase.com
7 WHITE & CASE LLP
5 Palo Alto Square, 9th Floor
8 3000 El Camino Real
Palo Alto, CA 94306
9 Telephone: (650) 213-0300
Facsimile: (650) 213-8158

10 Attorneys for Defendant
11 GROUPME, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 BRIAN GLAUSER, individually and on behalf
of a class of similarly situated individuals,

16 Plaintiffs,

17 v.

18 TWILIO, INC., a Delaware corporation; and
19 GROUPME, INC., a Delaware corporation,

20 Defendants.
21

CASE NO. 4:11-cv-02584-PJH

DECLARATION OF STEVE
MARTOCCI IN SUPPORT OF
DEFENDANT GROUPME, INC.'S
MOTION FOR SUMMARY JUDGMENT

DECLARATION OF STEVE MARTOCCI

I, Steve Martocci, declare:

1. I have personal knowledge of the facts set forth herein, or rely on the business records of GroupMe, Inc. ("GroupMe"), and can testify to such facts if called upon to do so.

2. I am one of the founders of GroupMe, a free social text messaging service I started with Jared Hecht in June 2010 in New York, New York. GroupMe's free social text messaging service stemmed from our desire to create a group messaging system that would allow us to use our cell phones to better communicate with each other and friends at music festivals in real-time.

3. When Jared and I founded GroupMe in June 2010, only some smartphones offered a group text messaging functionality that would display a group text message exchange among more than two people as a single conversation, *i.e.*, a thread. Individuals using cell phones without a group text messaging functionality could still be included in group text message exchanges, but, often, those cell phones would display messages from different group members as separate and different conversations. In other words, those cell phones often would not display group text messages on a single text message thread containing all of the messages exchanged among all group members. It was also cumbersome to communicate with a group of people in real-time using email because not everyone had a smartphone through which they could access email accounts, and, in any event, a data connection was not always available. We sought to create a platform for real-time group communications over "Short Message Service" ("SMS"), *i.e.*, text messaging, to improve group messaging conversations using cell phones.

4. I worked on GroupMe and its text messaging service full-time starting in July 2010, until I left GroupMe in approximately September 2013. During this time period, I was responsible for building the initial prototype of GroupMe's text messaging service and Internet application ("app"). I made fundamental decisions about GroupMe's business and technical aspects, and I was involved in almost all of GroupMe's day-to-day operations.

5. While I worked at GroupMe, it was (and still is) used as a group text messaging service that allowed families, friends, colleagues and other small groups to communicate easily with one another using cell phones. A wide array of groups have used GroupMe to communicate.

1 For example, in April 2011, I participated in GroupMe's decision to partner with the American
2 Cancer Society to encourage cancer patients, their friends and families to use GroupMe as a way to
3 create mobile support groups, or to organize fundraising events such as cancer walks. GroupMe
4 also received emails from individuals following an outbreak of tornados at the end of April 2011 in
5 the southern United States, when storms caused power outages and data networks were congested.
6 The emails, which I reviewed around the time they were received by GroupMe, informed me that
7 GroupMe's group text messaging service was used to check on family and friends in affected areas,
8 and emergency medical service providers in those areas used GroupMe to coordinate emergency
9 response with staff on different phone platforms. A true and correct copy of these emails as posted
10 on GroupMe's website while I worked at the company is attached as Exhibit A.

11 6. In June 2011, GroupMe received an email, which I reviewed around that time,
12 from a neighborhood watch group participant, stating mass emails did not enable his group to
13 communicate quickly enough in the event of a crime. His email stated his neighborhood watch
14 group used GroupMe to communicate during emergencies, such as home invasions and car thefts.
15 A true and correct copy of this email as posted on GroupMe's website while I worked at the
16 company is attached as Exhibit B.

17 7. In July 2011, I participated in GroupMe's efforts to work with student
18 organizations to, among other efforts, coordinate events raising money for charities.

19 8. "Mom" and "Dad" have been among the most common group names on
20 GroupMe's service.

21 9. Since I founded GroupMe, it has facilitated group text message conversations
22 using a proprietary software application, as modified, that I, among others, designed, and
23 application program interfaces (individually, an "API") provided by Twilio, Inc. ("Twilio") and
24 Bandwidth.com ("Bandwidth"). GroupMe's proprietary software has been responsible for and
25 capable of performing every step GroupMe needs to route group messages to the correct GroupMe
26 users in response to specific actions of other group members. The following describes GroupMe's
27 text messaging service while I worked at GroupMe.

28 //

1 **GroupMe's Text Messaging Service**

2 10. To set up a new GroupMe group, a first time user of GroupMe could register for
3 GroupMe by visiting website URL www.groupme.com or via GroupMe's smartphone app. The
4 new user was required to manually submit a form on the website or the smartphone app with his or
5 her name, cell phone number and email address as part of this registration process. The new user
6 was also, as part of the registration process, required to click on a button acknowledging he or she
7 agreed to GroupMe's terms of service and privacy policy. The terms of service available to visitors
8 to www.groupme.com or using the smartphone app explained, among other terms, to exit a group, a
9 user needed only text "#exit," or "STOP" to opt out of all GroupMe texts.

10 11. A user submitting this information to GroupMe through www.groupme.com or
11 GroupMe's smartphone app prompted GroupMe's software to send the user a text message to the
12 cell phone number provided, containing a confirmation code and welcome message. The text
13 message in substance stated, "Welcome to GroupMe! Group texting, calling & more. Your
14 confirmation code is MQZTP. Msg. & data rates may apply." The new user finished registration
15 when he or she submitted the confirmation code to www.groupme.com, thereby enabling
16 GroupMe's software to verify the new user owned the cell phone number submitted.

17 12. Once registered via the website or app, a user could create a GroupMe group by
18 providing GroupMe with names and cell phone numbers of members the group creator wanted to
19 add to the group. A group creator could also name the group he or she created to identify which
20 circle of the user's connections the group represented, *e.g.*, "Family," or to identify the purpose of
21 the group conversation, *e.g.*, "Poker." Members of an existing group could likewise add additional
22 members if they manually texted "#add theirname theirnumber."

23 13. A user who had already registered with GroupMe via its website could also create
24 a group on his or her cell phone using GroupMe's smartphone application. GroupMe's smartphone
25 application enabled a group creator to create a group, name the group, and manually enter names
26 and cell phone numbers of group members or select contact information for individuals stored in
27 the group creator's phone book. Similarly, an individual could create a group via SMS without the
28 app by texting certain commands to shortcode "GROUP" (47687), in which case the group creator

1 prompted GroupMe's software to send him or her a welcome message similar to the one described
2 in paragraph 11. The group creator could then manually enter cell phone numbers of individuals
3 along with a specific command, "#add," to add them to the group.

4 14. Only a group creator could create GroupMe groups, and only a group creator and
5 group members could provide cell phone numbers of individuals to join groups. Further,
6 GroupMe's software was initially programmed to permit a single GroupMe group to have up to
7 twenty-five members, and to limit the number of groups that could be created using the same IP
8 address. GroupMe later increased the number of permissible group members to fifty.

9 **Administrative Text Messages**

10 15. A group creator's creation of a GroupMe group prompted GroupMe's software to
11 obtain a unique ten-digit telephone number from Twilio or Bandwidth and to assign the number to
12 the group. Twilio and Bandwidth, in addition to providing GroupMe unique ten-digit phone
13 numbers for GroupMe groups, provided GroupMe connectivity to traditional telephone networks
14 and Internet through APIs.

15 16. Creation of a GroupMe group prompted GroupMe's software to determine which
16 cell phone numbers entered for group members used the GroupMe smartphone app. Group
17 members using the smartphone app were sent a push notification through the app informing them
18 that they had been added to a group.

19 17. By adding a user to a GroupMe group who did not use the GroupMe smartphone
20 app, a group creator prompted GroupMe's software to provide informational SMS messages that
21 would be helpful to the user. Specifically, if a group creator added a user to a GroupMe group who
22 did not use the GroupMe smartphone app, GroupMe's software was prompted to send the user a
23 welcome SMS message, informing the user he or she had been added to a group. The welcome
24 message was populated using information the group creator provided GroupMe, including the name
25 of the user being added, the name the group creator chose for the group, the name of the group
26 creator, and possibly the names of other group members if provided. The SMS welcome message
27 from GroupMe would also include instructions on how to exit the group and how to avoid any
28 potential text messaging charges from using the GroupMe app. The SMS protocol limited the

1 length of a text message to 160 characters. As a result, the welcome message may have been split
2 into more than one SMS message when delivered to the user.

3 18. Importantly, a group creator's action in adding someone to a GroupMe group
4 triggered the welcome message customized to the specific user receiving it based on the group
5 creator's input for the group.

6 19. Once added to a GroupMe group, users could receive messages from other group
7 members. The process for routing such messages started with a GroupMe group member sending a
8 message to the group by responding to the unique ten-digit phone number assigned to the group.
9 Upon receiving the message, GroupMe's software determined which group members associated
10 with the unique ten-digit phone number used the GroupMe smartphone app and would route the
11 message to those group members using the Internet. If group members did not have the smartphone
12 app, GroupMe's software routed the message over the Internet to a server used by Twilio or
13 Bandwidth. The message, using an API of Twilio or Bandwidth, was then routed to one of the
14 major wireless carriers' telephone networks for delivery to the users as SMS messages. All of the
15 routing functions undertaken by GroupMe's software occurred in response to group members
16 determining the content of the messages and the cell phone numbers of the individuals who were to
17 receive them.

18 20. If a GroupMe group user that did not use the GroupMe smartphone app was
19 inactive in a group, the user could, depending on the behavior of other group members, have
20 received up to two informational SMS messages regarding his or her failure to participate in group
21 texts. If a user was added to a group and subsequently received seven messages from other group
22 members, excluding the welcome message described above, without responding, the user received a
23 message informing the user he or she may be removed from the group for inactivity. The message
24 stated in substance, "Hey, are you there? GroupMe is more fun when you participate! We'll
25 remove you soon unless you reply to the group or text #stay. Reply #exit to leave."

26 21. If a user, after receiving a message regarding inactivity, received five more
27 messages from other group members without responding, the user received another message and
28 was removed from the group. The message stated in substance, "We haven't heard from you, so we

1 removed you from this group to be on the safe side. Don't worry, though. You can always get
2 back in by replying to this text." After being removed from a group, a user would not receive any
3 additional group messages or informational messages unless the user responded to the group text
4 message conversation.

5 22. If a user was added to a group and the other group members never exchanged
6 seven or twelve messages, the inactive group member would not receive the two messages
7 described above regarding inactivity. Again, all messages, including informational messages, were
8 triggered solely based on the actions of other group members.

9 23. GroupMe intended informational messages triggered by the actions of group
10 members, including the welcome message, messages informing the group when members left, or
11 messages informing group members the group creator changed the group name, to facilitate clear
12 and transparent group communication, providing group members information they expected to
13 receive.

14 24. GroupMe's software reacted entirely to the actions of its users. GroupMe could not
15 and did not perform any functions without user action. GroupMe could not and did not dial or send
16 messages without a user's specific instructions on what message to route and to whom, including
17 name(s) and phone number(s).

18 **GroupMe's Capabilities**

19 25. While I worked at GroupMe, its software was not capable of generating random or
20 sequential phone numbers, and GroupMe did not have or use any such equipment in connection
21 with its activities. GroupMe's software was also not capable of routing messages to random or
22 sequential phone numbers, and GroupMe did not have any such equipment. GroupMe did not
23 initiate messages. GroupMe merely responded to commands from group users who initiated
24 transmission of messages to specific phone numbers the users supplied.

25 26. GroupMe never generated random or sequential phone numbers. GroupMe never
26 sent a "blast" SMS to all users. As configured and designed, GroupMe's system was not
27 technologically capable of sending "blast" SMS messages to GroupMe users.

28 27. Further, GroupMe did not possess a predictive dialer, *i.e.*, equipment with the

1 capacity to dial phone numbers to reach recipients while timing the pace at which calls were made
2 to ensure a live GroupMe employee or other person was available to connect with the call recipient
3 when the phone was answered. GroupMe did not seek to connect any GroupMe group member
4 with any live person at GroupMe.

5 28. Re-coding GroupMe's software in an effort to enable it to generate random or
6 sequential phone numbers and to send messages to those phone numbers, to the extent it could have
7 been accomplished, would have constituted a substantial modification to GroupMe for two reasons.
8 First, it would have substantially modified GroupMe's very purpose and function. Jared and I
9 founded GroupMe to facilitate free social group messaging conversations among small groups of
10 individuals (up to twenty-five group members), including families, friends and colleagues, who
11 wanted to receive messages from and communicate with each another in real-time. GroupMe did
12 not seek to deliver content to random people, and the core purpose for which we founded GroupMe
13 would have been undermined if GroupMe engaged in random messaging.

14 29. Second, it would have required substantial modifications to GroupMe's software
15 code. GroupMe's software code was written to enable, primarily, the routing function for group
16 messages described above, and all of the functions GroupMe's software performed were done in
17 response to user action. To enable random messaging, someone would have been required to write
18 and insert new code into the software, enabling it to (1) generate random or sequential phone
19 numbers, (2) generate content to transmit to those phone numbers, (3) divide the phone numbers
20 into group sizes within GroupMe's group size limitation, or remove that limitation altogether, and
21 (4) transmit content to the phone numbers, including using an API of Twilio or Bandwidth, without
22 a user triggering any of those actions. None of the software engineers at GroupMe, up until the
23 time I left the company, had written code to enable such functionalities, and to learn to do so and
24 implement such changes would have been a significant undertaking.

25 **Brian Glauser**

26 30. On approximately August 1, 2011, I retrieved the texting history of plaintiff Brian
27 Glauser's "Poker" group. [REDACTED] created the group on April 18, 2011, with at least one
28 other member, and originally named it "GroupMe Chat." On April 23, 2011, [REDACTED] changed

1 the group name to "Poker," and thereafter added Mr. Glauser to the group along with five other
2 people.

3 31. The following is a true and correct transcript of all group text and informational
4 messages received and sent by Mr. Glauser using the long code "804-742-4986" as of August 1,
5 2011, with the informational messages provided by GroupMe in italics and Mr. Glauser's
6 responsive text message in bold:

7 Date Time Message

8 4-23-11 16:20

11 4-23-11 16:20

13 4-23-11 16:22

14 4-23-11 16:28

15 4-23-11 16:28

16 4-23-11 16:53

17 4-23-11 16:54

18 4-23-11 16:55

20 4-23-11 16:55

21 4-23-11 16:55

23 4-23-11 16:55

24 4-23-11 17:15

25 4-23-11 17:19

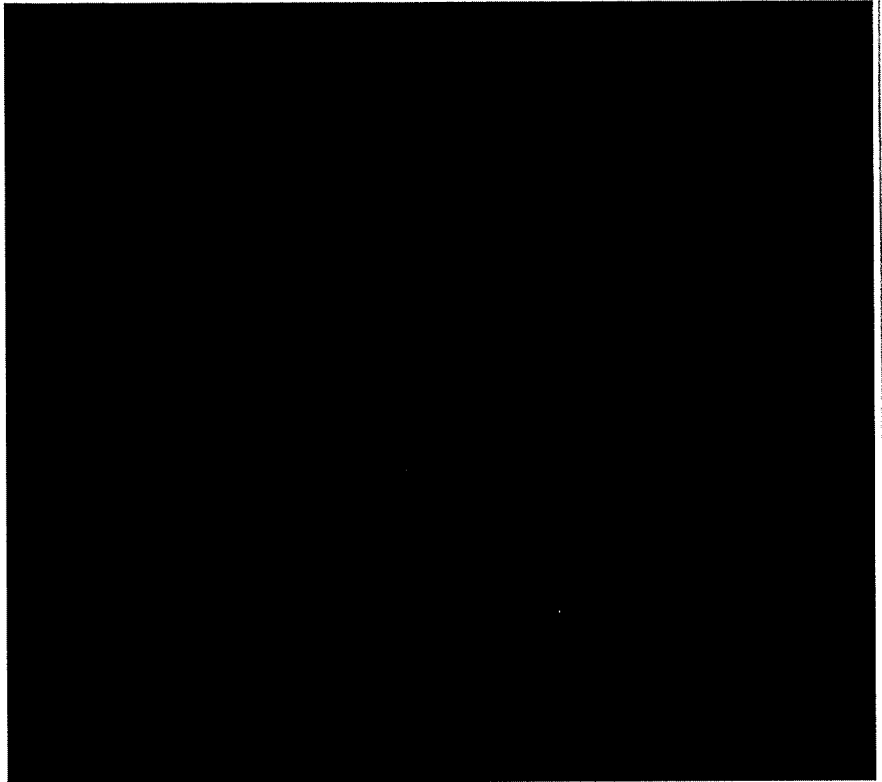
26 4-23-11 17:28

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1	4-23-11	17:29
2		
3	4-23-11	17:29
4		
5	4-23-11	17:38
6	4-23-11	17:51
7	4-23-11	17:54
8	4-23-11	17:55
9	4-23-11	17:58
10	4-23-11	17:58
11	4-23-11	18:01
12	4-23-11	18:03
13	4-23-11	20:26
14	4-23-11	20:49
15		
16	05-08-11	03:03
17	5-14-11	16:04
18		
19	5-14-11	16:04
20	5-14-11	16:06
21	5-14-11	16:07
22	5-14-11	16:07
23	5-14-11	16:07
24	5-14-11	16:35
25	5-14-11	16:57
26	5-14-11	17:08
27		
28	5-14-11	17:09

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5-15-11 14:14
5-15-11 14:15
5-15-11 14:15
5-15-11 14:15
5-15-11 14:17
5-15-11 14:18



(emphasis added).

32. Mr. Glauser registered for a GroupMe account on June 23, 2011, provided GroupMe his phone number, and, at approximately 1:00 p.m. that day, accepted GroupMe's terms and conditions.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the United States of America.

Executed this 28th day of April, 2014, at New York, New York.

Steve Martocci

EXHIBIT A

GroupMe
 The best way to chat with everyone you know. [Go to GroupMe](#)
[Sign Up](#)
[About GroupMe](#)
[Feedback](#)
[Twitter](#)
[Submit a post](#)
[RSS](#)
[archive](#)

Tweet 5



When Disaster Strikes

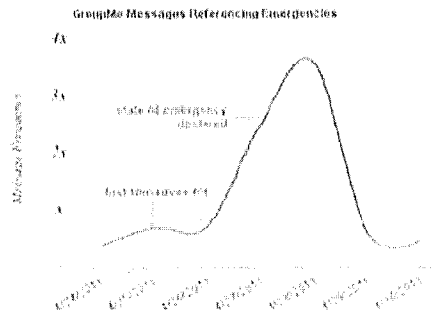
Staying in touch when it matters most

Our users continue to surprise us with unexpected and utterly amazing uses for GroupMe. Today, we're digging into some data and emails from our users to look at a vital use of our service: communicating during emergencies.

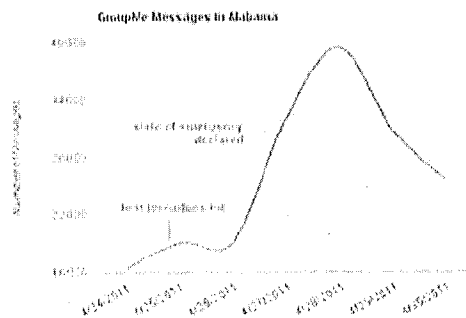
At the end of April, an outbreak of tornadoes in the American South devastated towns across the region, killing hundreds and causing billions of dollars in property damage. It already ranks among the most tragic natural disasters in American history.

As expected, GroupMe users nationwide were definitely talking about the tornadoes in their groups. Look at how the trend spiked during that period for messages mentioning "emergency", "tornado", or "disaster".

+ Follow groupme



With the news about the impending tornadoes spreading through the media and public social networks, talk about emergencies on GroupMe skyrocketed to nearly 4 times the usual level. More interestingly, though, we also found that people on the ground in affected areas found a much more practical use for GroupMe. With the power out across most of the state, landlines didn't work, and data networks were congested. In Alabama, simple SMS and cell phone calls were sometimes the only technologies that worked. Indeed, our data shows that usage in Alabama spiked to over 208% normal usage levels during the tornadoes. The graph is stunning:



What followed were amazing emails carrying stories of people using GroupMe to check in with family and friends, or even communicate with first responders. Just look at this one, from a user in northern Alabama:

With power out across North AL, I was introduced personally to GroupMe's use and it is awesome when all that really works is text. I'm promoting use with small groups of people that are narrowly focused on specific relief pieces [...], even promoting it as a business continuity tool within my company since we lost touch with all of our staff and had a few people directly located within the path of the storms.

Or this one, from a county EMS coordinator in North Carolina:

During our recent tornadoes in North Carolina we were able to coordinate our emergency response group via GroupMe. The simple interface and rapid setup allowed quick use of SMS to get folks informed and moving in to help. I know this is not the "intended" use of the system, but when time is limited and the need is there to message and establish a group phone conference, things worked really well. SMS has become a unified message system with so many of our staff on different phone platforms. GroupMe helped unified our tasks as well as assisted in the timeline of events.

This use case is something we didn't see coming, but we couldn't be more proud that GroupMe is helping people stay in touch when they need it most. This kind of story is exactly why we are so devoted to making GroupMe the best way to keep in touch with your groups, anytime, anywhere.

Of course, the process of rebuilding after the damage is nowhere near done. Please consider [donating](#) to [funds](#) dedicated to helping affected areas in the south.

Also, we want to hear how you are using GroupMe and feature it here. Send your story to stories@groupme.com.

(photo via [jamiesrabbits on Flickr](#))

May 13, 2011 11:24 pm

21 notes

8 stories

[@stacyadisti](#) likes this

[@101v](#) reblogged this from [jared](#)

[@paramendra](#) reblogged this from [jared](#) and added: powerful stuff. SMS Power <http://bit.ly/1Ar6SV>

[@misserva](#) likes this

[@cm96](#) likes this

[@narc](#) likes this

[@jared](#) reblogged this from [groupme](#) and added: Spilloon whipped up disaster relief. This, some...

[@youngandmiami](#) likes this

[@kevindavidrowe](#) likes this

[@lamer](#) likes this

[@stevespillman](#) reblogged this from [groupme](#)

[@benbokoff](#) likes this

[@makajima](#) likes this

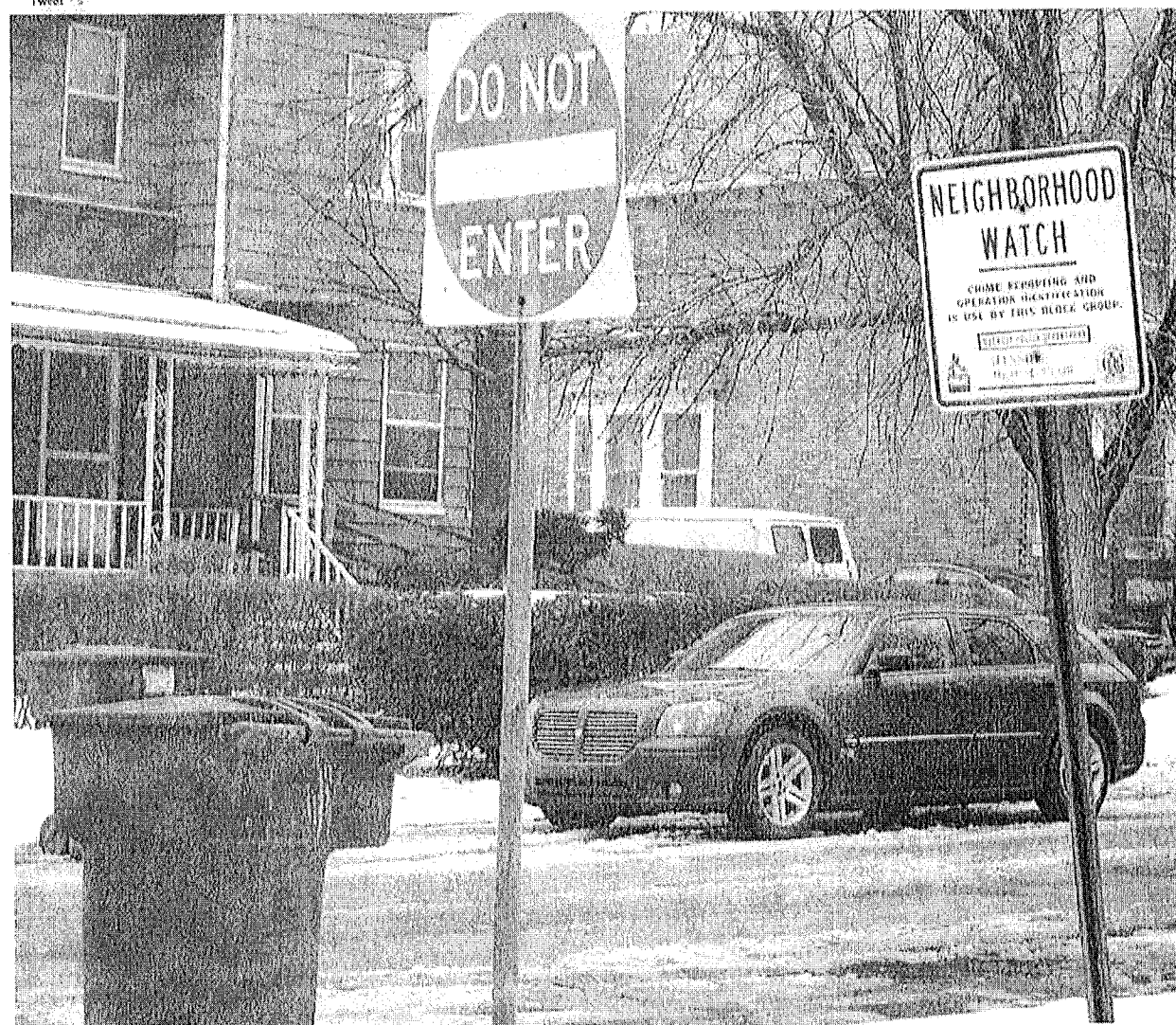
[@david-noel](#) likes this

[@groupme](#) posted this

EXHIBIT B

GroupMe
The best way to chat with everyone you know [Go to GroupMe](#)
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Submit a post
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+ Follow groupme



Neighborhood watch group uses GroupMe to stop crimes as they happen
This week, we received an amazing email from Bob in Detroit, who is using GroupMe with his neighborhood watch group to stop crimes as they happen before the police can even jump into action.

We're too amazed by this use case to try to summarize it any further, so we're publishing it in its entirety. Please read his note:

Crime. Drugs. Murders. Corruption. Homelessness. Crappy schools. Everything you've heard about Detroit is true. But there's a lot you may not have heard about. Urban gardens. Bike culture. Green space development. A redeveloped riverfront. Growing neighborhoods. Arts. Music. Detroit's a long way away from Shangri-la, but small pocket neighborhoods featuring low rent are attracting young professionals who want an urban experience. My small neighborhood, Hubbard Farms, consists of about 250 homes and has been consistently solid for over a century. That's not to say we haven't had to face up to typical urban issues on a weekly basis. Car theft and B&E's [Ed.: breaking and entering] are common. The infamous Hotel Yorba, a pay-by-the-week rental bohemiah, sits at one end of the neighborhood. This is the last chance for most of the people there to have a roof over their heads. Many are fine citizens. But once in a while, you get some meatball who makes or draws trouble.

The neighborhood has a well-used listserv but email communication is not the best way to communicate emergencies. We wanted to reach each other faster, and GroupMe was our answer with group texting.

Since March, we've been able to stop a home invasion, interrupt a car theft in progress, and snap a clear photograph of a vagrant chucking bricks through picture windows, all due to our ability to amass a large number of persons very quickly to the scene of the action.

GroupMe has provided a sense of empowerment in our community. We always know we have dozens of eyes and ears on the street. And if there is trouble, we know our neighbors are just a text message away. Detroit has a long way to go, but with communities using technology that supports the more positive efforts, we are just that much closer to where we all want to see things go. Better.

Bob

Thanks, Bob. We're humbled and inspired by your story.

As always, we want to hear how you are using GroupMe in your everyday life. Send us an email at stories@groupme.com.

Photo via [livesyncservice](#) on Flickr.

June 17, 2011 (2:43 pm)

38 items
[History](#)
[16](#)

[awesomemcclellan](#) reblogged this from [laughingsquid](#)
[edhandy-clothing](#) likes this
[laughingsquid](#) reblogged this from [penkwin](#) and added:
 fantastic idea
[jundulano](#) reblogged this from [laughingsquid](#)
[laughingsquid](#) likes this
[penkwin](#) reblogged this from [laughingsquid](#)
[laughingsquid](#) likes this
[thelonecushman](#) reblogged this from [groupme](#)
[breakintext](#) likes this
[davidgravin](#) likes this
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[battler](#) likes this
[seze](#) likes this
[lited](#) reblogged this from [groupme](#)
[jaredandwell](#) reblogged this from [groupme](#) and added:
 Using the groupme app to stop crime... awesome.
[jaredandwell](#) likes this
[jaredandwell](#) likes this
[applebaumel](#) likes this
[antshedimwest](#) likes this
[stellamedusa](#) likes this
[jaredandwell](#) reblogged this from [laughingsquid](#)
[weaseltari](#) likes this
[omwproduct](#) reblogged this from [laughingsquid](#)
[magdela](#) reblogged this from [laughingsquid](#) and added:
 Cool
[schweder](#) likes this
[gravin](#) reblogged this from [laughingsquid](#) and added:
 Whenever people talk about crime + data + informatics, it's usually about ways that individual acts can be measured...
[hyperonachari](#) reblogged this from [laughingsquid](#) and added:
 1000 Detroit
[stevapillman](#) likes this
[laughingsquid](#) reblogged this from [groupme](#) and added:
 Neighborhood Watch Group Uses GroupMe to Stop Crimes as They Happen
[mcumpton](#) reblogged this from [groupme](#)
[jansu](#) likes this
[katebaskew](#) likes this
[jengerick](#) likes this
[maum](#) posted this